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**DIRECTOR OFFICE
TECHNOLOGY CENTER 2600**

In re Application of:

Joseph M. Cannon, et al.

Application Serial No.: 09/777,889

Filed: February 7, 2001

For: **CORDLESS TELEPHONE ACTIVE-CALL
ENABLED INTERCOM**

**DECISION
ON PETITION**

This is a decision on the petition to withdraw improper holding of abandonment, filed April 16, 2007, pursuant to 37 CFR § 1.181.

Petitioner alleges that the examiner erred in holding the instant application abandoned and requests withdrawal of the holding of abandonment.

PERTINENT BACKGROUND FACTS

On June 30, 2005 a non-final action was mailed rejecting all pending claims 1, 2, 5-14, 19-22, 28 and 29. A response by applicant was filed on November 2, 2005, wherein claims 1, 5, 6, and 8-13 were amended and new claims 44-58 were added. On March 9, 2006 a Final rejection was mailed in response to the November 2, 2005 amendment, wherein all pending claims were rejected and it was stated that applicant's amendment necessitated the new grounds of rejection. On March 9, 2006, applicant filed an after final amendment and response. On June 6, 2006, an Advisory Action was mailed informing applicant that the after final response has been considered but does not place the application in condition for allowance.

On June 16, 2006 (mailed to applicant on June 28, 2006), an interview between the attorney of record and the examiner's supervisor is made of record, wherein the supervisor states that the Final action is vacated and asserts that a new Office action will be forthcoming. On April 5, 2007, a Notice of Abandonment is mailed based on applicant's failure to file a proper reply to the Final Office action mailed March 9, 2006. (It is noted that the Examiner inadvertently provided an incorrect date of June 6, 2006 on the Notice of Abandonment.)

Petitioner alleges that in view of the June 16, 2006 Interview Summary, the examiner erred in holding the instant application abandoned and therefore, applicant requests withdrawal of the holding of abandonment.

DECISION

MPEP §706.07(d) Final Rejection, Withdrawal of, Premature [R-5], states in part:

"If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection. **The finality of the Office action must be withdrawn while the application is still pending. The examiner cannot *>withdraw< the final rejection once the application is abandoned.**" (emphasis added)

A review of the file finds that the interview wherein the supervisor promised to vacate the Final rejection and to re-open prosecution with a new Office action took place after the expiration of the three month shortened statutory period for reply to the Final Office action. Since no extensions of time were applied for, the application became abandoned after midnight on June 9, 2006. Therefore, the supervisor was without the authority to withdraw the finality of the Office action on June 16, 2006 as the shortened statutory period had expired and the application was no longer pending without the necessary extension of time. The Office sincerely regrets that this insufficiency was not brought to the attention of applicant's representative at the time of the interview.

Accordingly, while the reason set forth in the Notice of Abandonment mailed April 5, 2007 appeared incorrect to applicant based on the June 16, 2006 Interview Summary, the application stands abandoned for the reasons set forth above.

Accordingly, the petition to withdraw an improper holding of abandonment is **DENIED**.

Applicant may want to consider filing a petition under 37 C.F.R. §1.137 to the Office of Petitions to revive the subject application.

Wanda H. Walker

Wanda Walker, Director
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Communications